



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/170881

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 27, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner's FoodShare was correctly reduced for December 2015 and whether it was correctly discontinued effective January 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner filed this appeal to contest the determination of the amount of his FoodShare allotment. Petitioner's FoodShare allotment was \$16.00 for the month of December 2015 and the discontinuance was effective January 2016.
3. Petitioner's household consists of himself and his spouse as of December 1, 2015. To that point Petitioner was a household of 1 but the agency learned that Petitioner was living with his wife who had her own open FoodShare case. Her case was closed and she was added to Petitioner's case.

4. In the calculation of Petitioner's FoodShare allotment for December 2015 the agency used income of \$2108.90 and indicates that this consists of Petitioner's SSDI of \$773.00 and his spouse's SSDI of \$1335.90. In the calculation the following amounts were deducted from income: a standard deduction of \$155.00, a shelter deduction of \$641.00 based on rent of \$1125.00 and a maximum utility allowance of \$458.00 and excess medical expense of \$69.90 based on Petitioner's spouse's payment of \$104.90 for a Medicaid Part A and B premium.
5. Petitioner and his spouse were informed that the Department of Health Services sought to disqualify them from receipt of FoodShare for a year for violating FoodShare regulations. They both signed a waiver thereby agreeing to the disqualification. The disqualification began January 1, 2016.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.* If income fluctuates, an averaged is used to determine income over the remainder of the certification period. *FSH, §1.2.4.2.* A certification period is typically 12 months. *FSH, §2.2.1.*

If a household passes the gross income test, the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$155 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility expense requires that a household have an actual utility obligation and is a standard deduction based on that obligation (\$30 where it is phone only); the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.3 and 8.1.3.*

In reviewing the calculation of Petitioner's FoodShare allotment, I do not find any errors.

As for the January 1, 2016 discontinuance, individuals determined to have committed an intentional program violation (IPV) is not eligible to receive FoodShare for the period of the disqualification. *See FSH, §3.14.1.1.* Petitioner and his spouse both signed a waiver thereby agreeing to the disqualification.

CONCLUSIONS OF LAW

1. That the agency has demonstrated that it correctly calculated Petitioner's FoodShare allotment for December 2015.
2. That Petitioner's FoodShare were correctly discontinued effective January 1, 2016 as he and his spouse both signed a waiver of a hearing for a FoodShare IPV thereby agreeing to a disqualification from FoodShare eligibility.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of February, 2016

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 17, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability